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July 29, 2024

*Via ECF*

The Honorable George B. Daniels  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1310  
New York, NY 10007

Re: *In re Terrorist Attacks on September 11, 2001*, 03 MDL 1570 (GBD) (SN)  
(All Actions)

Dear Judge Daniels:

I write on behalf of Defendant Kingdom of Saudi Arabia (“Saudi Arabia”), in opposition to the July 25, 2024 letter (ECF No. 10162) submitted by the Plaintiffs’ Executive Committees (“Plaintiffs”) seeking to supplement the record as to their motion for reconsideration and Rule 72 objections (ECF No. 9571), as to Judge Netburn’s January 26, 2024 Order (ECF No. 9562). Plaintiffs’ request to supplement the record should be denied.

On December 20, 2023, Plaintiffs filed their opposition to Saudi Arabia’s renewed motion to dismiss. With that opposition, Plaintiffs disclosed for the first time a supplemental expert declaration of Plaintiffs’ expert Bassem Youssef that, among other things, opines on a June 1999 video that Omar Al Bayoumi took in Washington, D.C. On January 26, 2024, after a careful review of the factors set out by the Second Circuit in *Outley v. City of New York*, 837 F.2d 587 (2d Cir. 1998), Judge Netburn struck the supplemental Youssef declaration as untimely under the Court’s expert discovery schedule, applying Federal Rule of Civil Procedure 37(c)(1). *See* ECF No. 9562, at 2-3 (explaining schedule); *id.* at 12-13 (striking declaration). In doing so, she observed that “Plaintiffs do not defend the timing of Youssef II’s production.” *Id.* at 13.

Plaintiffs now seek to supplement the record with respect to their motion for reconsideration and objections to the January 26 order based on assertions that “[m]edia and public interest” in the June 1999 video has been “significant.” ECF No. 10162, at 1. They seek to add to the record a transcript of a month-old CBS news television segment featuring Michael Morell, a former senior CIA official and current television commentator and podcast host. In the transcript, Morell repeats verbatim Plaintiffs’ characterization of the video as a “casing video” and as purportedly “chilling.” *Compare* ECF No. 10162-1, at 2, *with* ECF No. 9539, at 2.

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This is a judicial proceeding, subject to rules of procedure and evidence. Judge Netburn's ruling was based on Plaintiffs' failure to comply with the Court's scheduling orders, on Rule 37(c)(1), and on *Outley*. Neither press interest in Plaintiffs' theories nor Morell's commentary on them is relevant to the Court's review of that ruling. Nor are Morell's statements admissible for their substance. He has not been disclosed as an expert, has not issued a report, did not make his statements under oath, and has not been deposed. *See* Fed. R. Civ. P. 26(e); Fed. R. Evid. 603, 802. Were Plaintiffs to proffer Morell as an expert now, that proffer would be even less timely and less justified than their attempt to supplement Youssef's report.

The June 1999 video is in the record as Plaintiffs' Exhibit 10F in support of their opposition to Saudi Arabia's renewed motion to dismiss. The Court can review it in its entirety. No expert assistance is needed to interpret it. When it is watched as a whole, rather than reduced to out-of-context clips, it is clearly not the "casing video" that Plaintiffs assert. There is no plausible reason for a terrorist casing video to include video of a scenic river with emphasis on a duck and a toy boat, Pls. Ex. 10F at 1:48-2:27; the Islamic Center of Washington, D.C., including commentary on the beauty of its carpets, *id.* at 9:28-15:45; multiple shots of flowers and flower beds around Washington, D.C., *id.* at 19:50-19:55, 21:17-21:26, 29:58-30:11; aesthetically pleasing trees, *id.* at 22:26-22:54; a squirrel running across a lawn, *id.* at 17:48-17:56; exhibits inside the Washington Monument, including lengthy historical videos, *id.* at 26:25-29:41; a band playing on the National Mall, *id.* at 31:29-32:00; a man eating watermelon, *id.* at 34:17-34:50; artwork and decorative details inside the Capitol, *id.* at 41:34-41:52, 43:03-44:31, 48:03-50:46; and lamps and fountains, *id.* at 1:00:16-1:00:45. Plaintiffs' mischaracterization of the video does not withstand scrutiny, and their attempt to bolster that mischaracterization with Morell's out-of-court commentary deserves no credence.

Respectfully submitted,

/s/ Michael K. Kellogg

Michael K. Kellogg  
*Counsel for the Kingdom of Saudi Arabia*

Cc: All MDL Counsel of Record (via ECF)